

REFERENCE TITLE: criminal street gangs; sentencing

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2549

Introduced by
Representatives Campbell CH, Lujan

AN ACT

AMENDING SECTION 13-603, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-709.05; AMENDING TITLE 41, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO CRIMINAL STREET GANGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-603, Arizona Revised Statutes, is amended to
3 read:

4 13-603. Authorized disposition of offenders

5 A. Every person convicted of any offense defined in this title or
6 defined outside this title shall be sentenced in accordance with this chapter
7 and chapters 7, 8 and 9 of this title unless otherwise provided by law.

8 B. If a person is convicted of an offense, the court, if authorized by
9 chapter 9 of this title, may suspend the imposition or execution of sentence
10 and grant such person a period of probation except as otherwise provided by
11 law. The sentence is tentative to the extent that it may be altered or
12 revoked in accordance with chapter 9 of this title, but for all other
13 purposes it is a final judgment of conviction.

14 C. If a person is convicted of an offense, the court shall require the
15 convicted person to make restitution to the person who is the victim of the
16 crime or to the immediate family of the victim if the victim has died, in the
17 full amount of the economic loss as determined by the court and in the manner
18 as determined by the court or the court's designee pursuant to chapter 8 of
19 this title. Restitution ordered pursuant to this subsection shall be paid to
20 the clerk of the court for disbursement to the victim and is a criminal
21 penalty for the purposes of a federal bankruptcy involving the person
22 convicted of an offense.

23 D. If the court imposes probation it may also impose a fine as
24 authorized by chapter 8 of this title.

25 E. If a person is convicted of an offense and not granted a period of
26 probation, or when probation is revoked, any of the following sentences may
27 be imposed:

28 1. A term of imprisonment authorized by this chapter or chapter 7 of
29 this title.

30 2. A fine authorized by chapter 8 of this title. The sentence is
31 tentative to the extent it may be modified or revoked in accordance with
32 chapter 8 of this title, but for all other purposes it is a final judgment of
33 conviction. If the conviction is of a class 2, 3 or 4 felony, the sentence
34 cannot consist solely of a fine.

35 3. Both imprisonment and a fine.

36 4. Intensive probation, subject to the provisions of chapter 9 of this
37 title.

38 5. Intensive probation, subject to the provisions of chapter 9 of this
39 title, and a fine.

40 6. A new term of probation or intensive probation.

41 F. If an enterprise is convicted of any offense, a fine may be imposed
42 as authorized by chapter 8 of this title.

43 G. If a person or an enterprise is convicted of any felony, the court
44 ~~may~~, in addition to any other sentence authorized by law, ~~MAY~~ order the
45 forfeiture, suspension or revocation of any charter, license, permit or prior

1 approval granted to the person or enterprise by any department or agency of
2 the state or of any political subdivision.

3 H. A court authorized to pass sentence ~~upon~~ ON a person convicted of
4 any offense defined within or without this title shall have a duty to
5 determine and impose the punishment prescribed for such offense.

6 I. If a person is convicted of a felony offense and the court
7 sentences the person to a term of imprisonment, the court at the time of
8 sentencing shall impose on the convicted person a term of community
9 supervision. The term of community supervision shall be served consecutively
10 to the actual period of imprisonment if the person signs and agrees to abide
11 by conditions of supervision established by the state department of
12 corrections. Except pursuant to subsection J, the term of community
13 supervision imposed by the court shall be for a period equal to one day for
14 every seven days of the sentence or sentences imposed.

15 J. In calculating the term of community supervision, all fractions
16 shall be decreased to the nearest month, except for a class 5 or 6 felony
17 which shall not be less than one month.

18 K. Notwithstanding subsection I, if the court sentences a person to
19 serve a consecutive term of probation immediately after the person serves a
20 term of imprisonment, the court may waive community supervision and order
21 that the person begin serving the term of probation upon the person's release
22 from confinement. The court may retroactively waive the term of community
23 supervision or that part remaining to be served if the community supervision
24 was imposed before July 21, 1997. If the court waives community supervision,
25 the term of probation imposed shall be equal to or greater than the term of
26 community supervision that would have been imposed. If the court does not
27 waive community supervision, the person shall begin serving the term of
28 probation after the person serves the term of community supervision. The
29 state department of corrections shall provide reasonable notice to the
30 probation department of the scheduled release of the inmate from confinement
31 by the department.

32 L. If at the time of sentencing the court is of the opinion that a
33 sentence that the law requires the court to impose is clearly excessive, the
34 court may enter a special order allowing the person sentenced to petition the
35 board of executive clemency for a commutation of sentence within ninety days
36 after the person is committed to the custody of the state department of
37 corrections. If the court enters a special order regarding commutation, the
38 court shall set forth in writing its specific reasons for concluding that the
39 sentence is clearly excessive. The court shall allow both the state and the
40 victim to submit a written statement on the matter. The court's order, and
41 reasons for its order, and the statements of the state and the victim shall
42 be sent to the board of executive clemency.

43 M. A PERSON WHO COMMITS ANY FELONY OR MISDEMEANOR OFFENSE WHILE THE
44 PERSON IS INCARCERATED IN A JAIL OR PRISON AND WHO COMMITS THE OFFENSE TO
45 FURTHER, PROMOTE OR ASSIST A CRIMINAL STREET GANG OR SECURITY THREAT GROUP

1 SHALL BE SENTENCED FOR THE NEXT HIGHER CLASS OF OFFENSE THAN THAT FOR WHICH
 2 THE PERSON IS CURRENTLY CONVICTED, EXCEPT IF THE OFFENSE IS A CLASS 2 FELONY.
 3 IT IS A REBUTTABLE PRESUMPTION THAT THE PERSON COMMITTED THE OFFENSE TO
 4 FURTHER, PROMOTE OR ASSIST A CRIMINAL STREET GANG OR SECURITY THREAT GROUP IF
 5 THE PERSON HAS PREVIOUSLY BEEN VALIDATED AS A MEMBER OF A SECURITY THREAT
 6 GROUP BY THE STATE DEPARTMENT OF CORRECTIONS. FOR THE PURPOSES OF THIS
 7 SUBSECTION, "SECURITY THREAT GROUP" MEANS ANY ORGANIZATION, CLUB, ASSOCIATION
 8 OR GROUP OF INDIVIDUALS, EITHER FORMAL OR INFORMAL, THAT MAY HAVE A COMMON
 9 NAME OR IDENTIFYING SYMBOL AND WHOSE MEMBERS ENGAGE IN ACTIVITIES THAT
 10 INCLUDE PLANNING, ORGANIZING, THREATENING, FINANCING, SOLICITING, COMMITTING
 11 OR ATTEMPTING TO COMMIT UNLAWFUL ACTS THAT WOULD VIOLATE THE STATE DEPARTMENT
 12 OF CORRECTION'S WRITTEN INSTRUCTIONS AND THAT DETRACT FROM THE SAFE AND
 13 ORDERLY OPERATIONS OF PRISONS.

14 Sec. 2. Title 13, chapter 7, Arizona Revised Statutes, is amended by
 15 adding section 13-709.05, to read:

16 13-709.05. Special sentencing provision; security threat group
 17 member; definition

18 A. A PERSON WHO IS CONVICTED OF ANY OFFENSE THAT IS COMMITTED WHILE
 19 THE PERSON IS INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS AND WHO HAS
 20 PREVIOUSLY BEEN VALIDATED AS A MEMBER OF A SECURITY THREAT GROUP BY THE STATE
 21 DEPARTMENT OF CORRECTIONS, AS PART OF THE PERSON'S SENTENCE, SHALL BE
 22 REQUIRED TO REGISTER PURSUANT TO SECTION 41-1691.

23 B. THE COURT, ON ITS OWN INITIATIVE OR ON APPLICATION OF A PERSON WHO
 24 IS SENTENCED PURSUANT TO SUBSECTION A OF THIS SECTION, AFTER NOTICE AND AN
 25 OPPORTUNITY TO BE HEARD FOR THE PROSECUTING ATTORNEY AND, ON REQUEST, THE
 26 VICTIM, MAY TERMINATE THE REGISTRATION REQUIREMENT PURSUANT TO SECTION
 27 41-1691 AT A TIME EARLIER THAN THAT ORIGINALLY IMPOSED IF IN THE COURT'S
 28 OPINION THE ENDS OF JUSTICE WILL BE SERVED, IF THE COURT FINDS THAT THE
 29 DEFENDANT HAS NOT ENGAGED IN ANY CRIMINAL ACTIVITY OR ASSOCIATED WITH ANY
 30 CRIMINAL STREET GANG MEMBER OR SECURITY THREAT GROUP MEMBER FOR A PERIOD OF
 31 TEN YEARS AND IF THE CONDUCT OF THE DEFENDANT WARRANTS IT.

32 C. FOR THE PURPOSES OF THIS SECTION, "SECURITY THREAT GROUP" MEANS ANY
 33 ORGANIZATION, CLUB, ASSOCIATION OR GROUP OF INDIVIDUALS, EITHER FORMAL OR
 34 INFORMAL, THAT MAY HAVE A COMMON NAME OR IDENTIFYING SYMBOL AND WHOSE MEMBERS
 35 ENGAGE IN ACTIVITIES THAT INCLUDE PLANNING, ORGANIZING, THREATENING,
 36 FINANCING, SOLICITING, COMMITTING OR ATTEMPTING TO COMMIT UNLAWFUL ACTS THAT
 37 WOULD VIOLATE THE DEPARTMENT'S WRITTEN INSTRUCTIONS AND THAT DETRACT FROM THE
 38 SAFE AND ORDERLY OPERATIONS OF PRISONS.

39 Sec. 3. Title 41, chapter 11, Arizona Revised Statutes, is amended by
 40 adding article 9, to read:

41 ARTICLE 9. SECURITY THREAT GROUP REGISTRATION

42 41-1691. Security threat group; registration; definitions

43 A. A PERSON WHO HAS BEEN CONVICTED OF A VIOLATION OR ATTEMPTED
 44 VIOLATION OF ANY OFFENSE THAT IS PUNISHABLE PURSUANT TO SECTION 13-709.05 OR
 45 WHO HAS BEEN CONVICTED OF AN OFFENSE COMMITTED IN ANOTHER JURISDICTION THAT

1 IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OR ATTEMPTED VIOLATION OF ANY
2 OFFENSE THAT WOULD BE PUNISHABLE PURSUANT TO SECTION 13-709.05 OR WHO IS
3 REQUIRED TO REGISTER BY THE CONVICTING JURISDICTION, WITHIN TEN DAYS AFTER
4 THE CONVICTION OR WITHIN TEN DAYS AFTER ENTERING AND REMAINING IN ANY COUNTY
5 OF THIS STATE, SHALL REGISTER WITH THE STATE DEPARTMENT OF CORRECTIONS.

6 B. BEFORE THE PERSON IS RELEASED FROM CONFINEMENT THE STATE DEPARTMENT
7 OF CORRECTIONS SHALL COMPLETE THE REGISTRATION OF ANY PERSON WHO IS
8 IMPRISONED IN THIS STATE AND WHO IS SUBJECT TO SUBSECTION A OF THIS SECTION.
9 WITHIN THREE DAYS AFTER THE PERSON REGISTERS OR THE PERSON'S RELEASE FROM
10 CONFINEMENT, THE STATE DEPARTMENT OF CORRECTIONS SHALL MAKE AVAILABLE THE
11 REGISTERED PERSON'S STATEMENT, FINGERPRINTS AND PHOTOGRAPHS TO THE DEPARTMENT
12 OF PUBLIC SAFETY AND TO THE SHERIFF OF THE COUNTY IN WHICH THE REGISTERED
13 PERSON INTENDS TO RESIDE.

14 C. THE COURT MAY ORDER THE TERMINATION OF ANY DUTY TO REGISTER UNDER
15 THIS SECTION IF THE PERSON WAS UNDER EIGHTEEN YEARS OF AGE WHEN THE OFFENSE
16 FOR WHICH THE PERSON WAS CONVICTED WAS COMMITTED.

17 D. AT THE TIME OF REGISTERING, THE PERSON SHALL SIGN OR AFFIX AN
18 ELECTRONIC FINGERPRINT TO A STATEMENT GIVING SUCH INFORMATION AS REQUIRED BY
19 THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS, INCLUDING ALL NAMES BY
20 WHICH THE PERSON IS KNOWN. THE INFORMATION THAT IS REQUIRED BY THIS
21 SUBSECTION SHALL INCLUDE THE PHYSICAL LOCATION OF THE PERSON'S RESIDENCE AND
22 THE PERSON'S ADDRESS. IF THE PERSON HAS A PLACE OF RESIDENCE THAT IS
23 DIFFERENT FROM THE PERSON'S ADDRESS, THE PERSON SHALL PROVIDE THE PERSON'S
24 ADDRESS, THE PHYSICAL LOCATION OF THE PERSON'S RESIDENCE AND THE NAME OF THE
25 OWNER OF THE RESIDENCE IF THE RESIDENCE IS PRIVATELY OWNED AND NOT OFFERED
26 FOR RENT OR LEASE. IF THE PERSON RECEIVES MAIL AT A POST OFFICE BOX, THE
27 PERSON SHALL PROVIDE THE LOCATION AND NUMBER OF THE POST OFFICE BOX. IF THE
28 PERSON DOES NOT HAVE AN ADDRESS OR A PERMANENT PLACE OF RESIDENCE, THE PERSON
29 SHALL PROVIDE A DESCRIPTION AND PHYSICAL LOCATION OF ANY TEMPORARY RESIDENCE
30 AND SHALL REGISTER AS A TRANSIENT NOT LESS THAN EVERY NINETY DAYS WITH THE
31 STATE DEPARTMENT OF CORRECTIONS.

32 E. WITHIN SEVENTY-TWO HOURS, EXCLUDING WEEKENDS AND LEGAL HOLIDAYS,
33 AFTER MOVING FROM THE PERSON'S RESIDENCE OR AFTER CHANGING THE PERSON'S NAME,
34 A PERSON WHO IS REQUIRED TO REGISTER UNDER THIS ARTICLE SHALL INFORM THE
35 SHERIFF IN PERSON AND IN WRITING OF THE PERSON'S NEW RESIDENCE, ADDRESS OR
36 NEW NAME. IF THE PERSON MOVES TO A LOCATION THAT IS NOT A RESIDENCE AND THE
37 PERSON RECEIVES MAIL ANYWHERE, INCLUDING A POST OFFICE BOX, THE PERSON SHALL
38 NOTIFY THE SHERIFF OF THE PERSON'S ADDRESS. IF THE PERSON DOES NOT HAVE AN
39 ADDRESS OR A PERMANENT PLACE OF RESIDENCE, THE PERSON SHALL REGISTER AS A
40 TRANSIENT NOT LESS THAN EVERY NINETY DAYS WITH THE SHERIFF IN WHOSE
41 JURISDICTION THE TRANSIENT IS PHYSICALLY PRESENT. WITHIN THREE DAYS AFTER
42 RECEIPT OF THE PERSON'S NEW INFORMATION, THE SHERIFF SHALL FORWARD IT TO THE
43 DEPARTMENT OF PUBLIC SAFETY AND TO THE STATE DEPARTMENT OF CORRECTIONS.

- 1 F. A PERSON WHO IS SUBJECT TO REGISTRATION UNDER THIS SECTION AND WHO
- 2 FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION IS GUILTY OF A CLASS 4
- 3 FELONY.
- 4 G. FOR THE PURPOSES OF THIS SECTION:
- 5 1. "ADDRESS" MEANS THE LOCATION AT WHICH THE PERSON RECEIVES MAIL.
- 6 2. "RESIDENCE" MEANS THE PERSON'S DWELLING PLACE, WHETHER PERMANENT OR
- 7 TEMPORARY.